



Legislative Bulletin.....December 15, 2005

Contents:

H.R. 2830—Pension Protection Act Amendment

H.R. 2830, the Pension Protection Act of 2005, is scheduled to be considered on the House floor on Thursday, December 15th, subject to a closed rule (H.Res. 602) self-executing an amendment in the nature of a substitute that includes a few changes agreed to in the much-publicized deal with the United Auto Workers. In other words, there will not be a separate vote on the substitute; voting for the rule automatically inserts the substitute text into H.R. 2830. No amendments can be offered on the House floor, though the rule does allow for one motion to recommit, with or without instructions.

Highlights of the changes in the substitute relative to the underlying reported bill are below. For a summary of the underlying bill, see a separate RSC document released last night.

- Allows the payment of plant-shutdown benefits from single-employer pension plan assets—as long as the benefits are funded up front for plans funded below 80% (just like regular benefit increases).
- Allows plans to include credit balances in plan assets when calculating a funding deficit—as long as such plan has an agreement with the Pension Benefit Guaranty Corporation (PBGC) that prohibits it from using credit balances to offset required contributions.
- Requires collectively bargained plans to use credit balances to increase plan assets in order to prevent triggering benefit restrictions for less-than-fully-funded plans.
- Provides for a five-year phase-in for the exemption from benefit restrictions for single-employer plans funded under 100%.
- Makes several modifications to the requirements for “critical status” multi-employer plans, as follows:
 - Allows for surcharges on such plans and changes to certain benefits if necessary to protect of normal retirement benefits;
 - Waives the funding deficiency penalty for plans that have adopted a rehabilitation plan and are complying with the terms of that plan, yet maintains

the penalty for plans that do not adopt and/or comply with a rehabilitation plan;
and

--Grandfathers the existing interest rate used by plans that have been given funding waivers or extended amortization periods (or have pending applications for such relief) as of June 30, 2005.

- Clarifies that distributions made to correct erroneous contributions under automatic enrollment plans are not subject to restrictions on 401(k) (defined contribution) withdrawals and other rules relating to regular distributions.
- Allows up to \$500 of unused dependent care balances in flexible spending arrangements (FSAs) to be rolled over into the next year. *[The reported bill allows this carry-over just for health care FSAs.]*
- Directs the Secretary of Labor to issue regulations clarifying that the selection of an annuity as a form of distribution from a plan is subject to ERISA's fiduciary standards.
- Provides fiduciary protection to plans that "map" a participant's investments into similar funds when a plan changes administrators or when funds are replaced—but only when the participant has given no investment direction to the contrary.
- Clarifies that employer health plans may recover health benefits paid to a participant if the participant is reimbursed for the same expenses by a third party (such as an insurance company).

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